



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

IN THE MATTER OF:

SUMMITVILLE MINE SUPERFUND SITE
SITE NO. Y3

NEWMONT EXPLORATION LIMITED,
NEWMONT GOLD COMPANY, AND
NEWMONT MINING CORPORATION,

RESPONDENTS.

PROCEEDING UNDER SECTION 122(g)(4)
OF THE COMPREHENSIVE ENVIRONMENTAL
RESPONSE, COMPENSATION, AND
LIABILITY ACT, AS AMENDED
(42 U.S.C. § 9622(g)(4)).

EPA DOCKET NUMBER
CERCLA-VIII-97-

98-02

**CERCLA SECTION 122(g)(4) DE MICROMIS
ADMINISTRATIVE ORDER ON CONSENT**

I. JURISDICTION

1. This Administrative Order on Consent ("Consent Order" or "Order") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency (EPA) by Executive Order 12580, 52 *Fed. Reg.* 2923 (Jan. 29, 1987), and further delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-E. This authority has been redelegated to the Assistant Regional Administrator for Enforcement, Compliance and Environmental Justice.

2. This Order is issued to Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company (Respondents). The Respondents consent to and will not contest EPA's jurisdiction to issue this Consent Order or to implement or enforce its terms.

II. STATEMENT OF PURPOSE

3. By entering into this Consent Order, the mutual objectives of the Parties are:

a. to reach a final de micromis settlement between the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), which resolves Respondents potential civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607 and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, for injunctive relief with regard to the Site, and for response costs incurred and to be incurred at or in connection with the Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating the potentially responsible parties covered by this Order from further involvement at the Site; and

c. to protect Respondents, and to the extent provided herein, their affiliates, successors and assigns, from any lawsuit a potentially responsible party could bring against them for response costs incurred and to be incurred at or in connection with the Site and to provide full and complete contribution protection for Respondents, and to the extent provided herein, their affiliates, successors and assigns, with regard to the Site pursuant to Sections 122(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. § 9622(f)(2) and § 9622(g)(5).

III. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Consent Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Consent Order, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

"Consent Order" or "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, the Order shall control.

"Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Information currently known to the United States" shall mean that information and those documents contained in the Administrative Record and Site File for the Site as of the effective date of this Order.

"New Information" shall mean information not contained in the Administrative Record or Site File for the Site as of the effective date of this Order.

"Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral.

"Parties" shall mean EPA and the Respondents.

"Respondents" shall mean Newmont Exploration Limited, Newmont Mining Corporation, and Newmont Gold Company.

"Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA.

"Section" shall mean a portion of this Consent Order identified by a Roman numeral.

"Site" shall mean the Summitville Mine Superfund Site Remedial Investigation/Feasibility Study Area within Rio Grande County, Colorado. Approximately 550 acres of the Site, known as the Summitville Minesite, have been disturbed by mining activities and are currently undergoing remedial action. As depicted on the map attached as Appendix A, the Site consists of portions of the Alamosa River Watershed EPA believes may have been impacted by releases of hazardous substances from the Summitville Minesite. More specifically, the Site includes the following areas: Area 1 - Summitville Mine Site - - The area within the mine permit boundaries; Area 2 - Wightman Fork - - The Wightman Fork and associated wetlands between the down stream mine permit boundary to the confluence with the Alamosa River; Area 3 - Alamosa River - - The Alamosa River and associated wetlands from the confluence with the Wightman Fork downstream to the inlet of the Terrace Reservoir; Area 4 - Terrace Reservoir - - The area which contains the Terrace Reservoir; and Area 5 - Below Terrace Reservoir - - The area below the Terrace Reservoir which has been impacted by contamination transported by the Alamosa River and irrigation canals.

"United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

IV. STATEMENT OF FACTS

4. The United States Environmental Protection Agency (EPA) initiated removal response actions at the Site on December 18, 1992 to address releases or threatened releases of hazardous substances into the Alamosa River and surrounding environment pursuant to the President's authority under Sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 42 U.S.C. §§ 9604 and 9606 (CERCLA).

5. On May 31, 1994, EPA listed the Site on the National Priorities List as a result of releases or threatened releases of hazardous substances at or from the Site.

6. On December 15, 1994, EPA issued four Interim Records of Decision selecting the interim remedial actions to be implemented for the following activities and/or areas at the Summitville Mine Site: Water Treatment (WT IROD), Reclamation, the Heap Leach Pad (HLP IROD) and the Cropsy Waste Pile, Beaver Mud Dump/Summitville Dam Impoundment, and Mine Pits (CWP IROD).

7. As of March 31, 1997, the United States incurred approximately \$109 million in response costs responding to the release or threatened release of hazardous substances at or in connection with the Site. The United States continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site.

8. Newmont Exploration Limited (NEL) conducted extremely limited exploration activities at the Site. NEL was previously a wholly owned subsidiary of Newmont Mining Corporation and is currently a wholly owned subsidiary of Newmont Gold Company.

9. Newmont Exploration Limited leased some property within the Site for approximately seven months from June 1953 to January 1954. Pursuant to the lease, limited exploratory activities were conducted, including conducting nonintrusive geophysical surveys of the area, collecting small surface soil and rock samples for assaying, drilling approximately nine small diameter exploratory holes and conducting limited reconnaissance examinations of portions of the underground mine workings. Exploratory drilling activities such as those conducted at the Site are designed to collect core samples to evaluate the geology of the area. Respondents assert that such exploratory activities did not generate mine wastes.

10. The total volume of waste rock, tailings and other mine waste (including the Heap Leach Pad) requiring remediation at the Site is approximately 11 million cubic yards. According to the WT IROD, approximately 321,000 pounds of copper per year, if left untreated, would contaminate the receiving waters surrounding the Site, including the Wightman Fork and Alamosa River. EPA has determined parties are eligible for a de minimis settlement if their contribution of mine waste and metals loading is equal to or less than 3% of the total volume of hazardous substances contributed to each of these media. The Respondents' contribution of hazardous substances to these media is below the 3% de minimis cut-off established by EPA for the Site. De micromis parties are parties that have generated less than .0001% of the hazardous substances found at the Site. Respondents' alleged contribution is less than .0001% of the hazardous substances found at the Site.

11. Based on information currently known to the United States, EPA has calculated the Respondents' de micromis eligibility as follows: Respondents assert that the activities of NEL did not contribute any mine wastes to the Site. Even assuming a worst case scenario where all of the materials generated by NEL's exploration activity were deposited at the Site, EPA has estimated that the amount of hazardous substances allegedly contributed to the Site by Respondents constitutes substantially less than .0001% of the total volume of waste rock, tailings or mine waste requiring remediation at the Site. EPA has also determined that the Respondents' activities have not contributed any copper loading to the waters at or emanating from the Site.

12. The material allegedly generated and disposed of by the Respondents therefore involves only a minuscule portion of the total hazardous substances generated or disposed of at the Site. EPA has also concluded that the hazardous substances allegedly contributed to the Site by Respondents are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

13. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund will be \$152 million. EPA has determined that the amount of waste which may have been contributed to the Site by the Respondents is so minor that it would be inequitable to require them to help finance or perform cleanup at the Site.

V. DETERMINATION

14. Based upon the Statement of Facts set forth above and on the information currently known to the United States, EPA has determined that:

(1) The Site is a "facility" as that term is defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

(2) Each of the Respondents is a "person" as that term is defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

(3) Each of the Respondents may be a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

(4) There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Sections 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

(5) The amount of hazardous substances contributed to the Site by the Respondents and the toxic or other hazardous effects of the hazardous substances contributed to the Site by the Respondents are minuscule in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

(6) Respondents are eligible for a de micromis settlement because they have contributed no more than a minuscule amount of hazardous substance, if any, to the Site.

(7) The terms of this Consent Order are consistent with EPA policy and guidance for settlements with de micromis waste contributors, including but not limited to, "Revised Guidance on CERCLA Settlements with De Micromis Waste Contribution," OSWER Directive #9834.17 (June 3, 1996).

(8) Prompt final settlement with the Respondents is practicable and in the public interest within the meaning of Section 122 (g) (1) of CERCLA, 42 U.S.C. § 9622(g)(1).

(9) The settlement of this case without litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving any liability that the Respondents may have for response actions and response costs with respect to all releases or threatened releases at or in connection with the Site.

VI. ORDER

15. Based upon the Information currently known to the United States and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED;

VII. PARTIES BOUND

16. This Consent Order shall apply to and be binding upon EPA and upon Respondents and their successors and assigns. Any change in ownership or corporate or other legal status of the Respondents including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Respondents' responsibilities under this Consent Order. Each signatory to this Consent Order certifies that he or she is authorized to enter into the terms and conditions of this Consent Order and to execute and bind legally the party represented by him or her.

VIII. CERTIFICATION OF RESPONDENTS

17. By signing this Consent Order, the Respondents certify that, to the best of their knowledge and belief, they have:

(1) conducted a thorough, comprehensive, good faith search for documents, and have fully and accurately disclosed to EPA, all non-privileged documents currently in their possession, or in the possession of their officers, directors, employees, contractors or agents, which relate in any way to their liabilities under CERCLA and RCRA for ownership, operation, exploration activities or control of the Site;

(2) not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information relating to their potential CERCLA and RCRA liabilities regarding the Site after notification of such potential liabilities; and

(3) fully complied to EPA's satisfaction with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

IX. COVENANTS NOT TO SUE

18. a. Except as provided in Section X (Reservation of Rights) of this Order, the United States covenants not to sue or take any other civil or administrative action against the Respondents for reimbursement of response costs or for injunctive relief pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, relating to the Site.

b. The United States' covenant not to sue extends to Respondents and to their affiliates, successors and assigns, but only to the extent that the liability of such affiliates, successors and assigns is derivative of Respondents' liability for those

acts set forth in Paragraph 9, Section IV of this Order. The United States' covenant not to sue does not extend to any other person.

X. RESERVATION OF RIGHTS

19. The covenant not to sue by the United States set forth in Paragraph 18 of this Order does not pertain to any matters other than those expressly specified in Paragraph 18. The United States reserves, and this Order is without prejudice to, all rights against the Respondents with respect to all other matters, including but not limited to the following:

- a) criminal liability;
- b) any liability against Respondents that results from their future disposal activities at the Site; or
- c) liability for damages for injury to, destruction of, or loss of natural resources, including any cost of assessing the injury to, destruction of, or loss of such natural resources.

20. Notwithstanding any other provision in this Consent Order, the United States reserves, and this Consent Order is without prejudice to, the right to institute judicial or administrative proceedings against the Respondents seeking to compel Respondents to perform response actions at the Site and/or to reimburse the United States for response costs if New Information is discovered that the Respondents no longer qualify for a de micromis settlement under the criteria stated in Paragraphs 10 - 12 of this Order.

21. For purposes of Paragraph 20, "New Information" shall not include any recalculation of the total volume of waste rock, tailings or mine waste containing hazardous substances requiring remediation at the Site based solely on Information currently known to the United States.

XI. COVENANT NOT TO SUE BY RESPONDENTS

22. The Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees with respect to the Site or this Order, including, but not limited to:

- (1) any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through Sections 106 (b) (2) , 111, 112 or 113 of CERCLA, 42 U.S.C. § § 9606 (b) (2) , 9611, 9612 or 9613;

(2) any claim arising out of response activities at the Site; and

(3) any claim against the United States pursuant to Sections 107 or 113 of CERCLA, 42 U.S.C. §§ 9607 or 9613, relating to the Site.

23. Nothing in this Order shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

24. The Respondents also waive any challenge they may have to any response action selected in any Action Memorandum, Interim Record of Decision or final Record of Decision for the Site.

XII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

25. Nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Order may have under applicable law. The United States and the Respondents each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

26. Respondents consent and agree to comply with and be bound by the term of this Order. The United States and the Respondents agree that this Order, Respondents' consent to this Order and actions in accordance with this Order shall not in any way constitute or be construed as an admission of any liability by Respondents or of any legal or factual matters set forth in this Order. Further, neither this Order, Respondents' consent to this Order, nor Respondents' actions in accordance with this Order shall be admissible in evidence against Respondents without their consent, except in a proceeding to enforce this Order. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Consent Order, the validity of the Statement of Facts and Determinations contained in this Consent Order.

27. With regard to claims for contribution against Respondents and their affiliates, successors and assigns for matters addressed by this Order, the Parties hereto agree that Respondents and their affiliates, successors and assigns are entitled, as of the effective date this Order, to such protection from contribution actions or claims as is provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5) for "matters addressed" in this Consent Order. "Matters addressed" by this Order shall include all claims the United States has taken or brought or could bring

or any other civil or administrative action the United States could take against Respondents, or their affiliates, successors and assigns only to the extent that their liability is derivative of Respondents' liability for those acts set forth in Paragraph 9, Section IV of this Order, for injunctive relief or for reimbursement of response costs pursuant to Section 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) or Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6973, related to the Site.

XIII. PUBLIC COMMENT

28. This Order shall be subject to a thirty-day public comment period in accordance with Section 122(i) of CERCLA, 42 U.S.C. § 9622 (i). In accordance with Section 122 (i)(3), 42 U.S.C. § 9622 (i)(3), EPA may withdraw or modify its consent to this order if comments received disclose any facts or considerations which indicate that this Order is inappropriate, improper, or inadequate.

XIV. ATTORNEY GENERAL APPROVAL

29. The Attorney General or her designee has approved the settlement embodied in this order in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XV. EFFECTIVE DATE

30. The effective date of this Order shall be the date upon which the Assistant Regional Administrator, EPA Region VIII notifies the Respondents that the public comment period undertaken pursuant to Paragraph 28 of this Order has closed and that comments received, if any, do not require EPA's withdrawal from or the modification of any terms of this Order.

IT IS SO AGREED:

NEWMONT MINING CORPORATION,
NEWMONT EXPLORATION LIMITED and
NEWMONT GOLD COMPANY

By: 
JOY E. HANSEN
Vice President

DATE: 7/28/97

IT IS SO ORDERED AND AGREED:

ENVIRONMENTAL PROTECTION AGENCY, REGION VIII

BY: Martin Hernandez for
CAROL RUSHIN
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

DATE: 9/2/97

Figure 1
Summitville Mine Site
Study Areas for Baseline Risk Assessment

